



DEPARTMENT OF PUBLIC SAFETY POLICIES & PROCEDURES



POLICY NUMBER

PRS: 21

EFFECTIVE
DATE:
05/02/2011

ORIGINAL
ISSUED ON:
08/01/1996

REVISION NO:

3

SUBJECT: DRUG AND ALCOHOL TESTING

1.0 PURPOSE

The purpose of this policy is to provide a fair and equitable system for identifying the existence of drug or alcohol use among employees and candidates for employment of the Department of Public Safety (DPS) and to provide rehabilitation programs or imposing sanctions upon those employees or candidates.

2.0 POLICY

It is the policy of the Department of Public Safety (DPS) to provide a drug and alcohol free work environment for its employees by administering a drug and alcohol abuse program to include provisions for both drug awareness and education. It is a violation of this policy to use, possess, sell, trade, and/or offer for sale alcohol, illegal drugs or intoxicants. Drug and/or alcohol testing will be given as required or deemed necessary and appropriate to detect the presence of alcohol or drugs above defined acceptable levels as it applies to employees or candidates. It is also the policy of DPS to provide referral to rehabilitation programs and to impose sanctions on employees or candidates who have abused alcohol or drugs.

3.0 APPLICABILITY

This policy applies to all Department of Public Safety employees in safety-sensitive, omnibus safety-sensitive, and non-safety sensitive positions and to candidates for employment in those positions within the Department.

4.0 REFERENCES

- A. CALEA Chapter 22 – Compensation, Benefits, and Conditions of Work
- B. Drug-Free Workplace Act of 1988
- C. Omnibus Transportation Employee Testing Act of 1991
- D. NMAC Title 1 Chapter 7 Part 8; State Personnel Administration; Drug and Alcohol Abuse

5.0 DEFINITIONS

- A. **Alcohol** – All consumable non-prescription substances, which contain alcohol, specifically including without limitation, spirits, wines, malt beverages, and intoxicating liquors.
- B. **Aliquot** – A portion of a urine specimen used for testing.
- C. **Candidate** – Any person who has formally applied for employment with DPS.

- D. Cabinet Secretary** – Secretary of the Department of Public Safety
- E. CDL** – Commercial Driver's License.
- F. Chain of Custody** – Refers to procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. A chain of custody form shall be used for blood and urine samples. In any dispute regarding chain of custody, the identity and integrity of the sample at issue may be shown by a preponderance of the evidence.
- G. Confirmatory Test** – A second analytical procedure to identify the presence of a specific drug or metabolite in a urine specimen by gas chromatography/mass spectrometry (GC/MS).
- H. Drug** – Marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines or a metabolite of those drugs or any non-prescription substance containing those drugs.
- I. Drug Abuse Coordinator (DAC)** – A Department of Public Safety employee appointed by the Secretary to coordinate the drug and alcohol testing program.
- J. Employee** – Any person employed by the Department of Public Safety.
- K. Initial Test** – An immunoassay screen, which meets the requirements of the Food and Drug Administration, used to eliminate negative specimens from further consideration.
- L. Laboratory** – An independent laboratory that meets applicable provisions of any state licensure requirement and is certified by the Substance Abuse and Mental Health Services Administration or the College of American Pathologists in Forensic Urine Drug Testing.
- M. Medical Review Officer (MRO)** – A New Mexico based and licensed physician knowledgeable in the medical use of prescription/non-prescription drugs and alcohol and the pharmacology and toxicology of illicit drugs and alcohol.
- N. Non-Prescription** – All substances, other than a substance which has been prescribed for the particular candidate or employee by a doctor or other health professional licensed with authority to prescribe such substances by the State of New Mexico or other governmental entity of the United States.
- O. Omnibus Safety-Sensitive Position** – A safety-sensitive position within DPS involving transportation responsibilities to include aviation, trucking, railroads, mass transit, and other transportation positions. Some positions may require a commercial driver's license or certification by the Federal Aviation Administration.
- P. On Duty** – Any time during an employee's workday and/or while operating a state vehicle.
- Q. Random Selection** – A system for selecting employees or groups of employees for drug or alcohol testing in a statistically random system based on a neutral criterion, such as employment or social security numbers without individualized suspicion that a particular employee is using drugs or alcohol.
- R. Reasonable Suspicion** – A belief drawn from specific objective and articulable facts and the reasonable inferences drawn from those facts.

- S. Safety-Sensitive Position** – A position approved as such by the State Personnel Board or for NMSP employees, the Department Secretary, in which impairment by drug or alcohol use would constitute an immediate and direct threat to public health or safety and includes, but is not limited to, peace officers, employees who are required to regularly handle a firearm, and employees who regularly transport other people as their principal job.
- T. Split Sample** – Created when an initial urine sample is split into two. One sample is used for the initial screen test and if positive, the second sample is used for the confirmation test.
- U. Substance Abuse Professional (SAP)** – A licensed physician (Medical Doctor or Doctor of Osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselor's Certification Commission) with knowledge of diagnosis and treatment of alcohol and controlled substance related disorders.

6.0 PROCEDURE

It is the policy of the Department of Public Safety to provide a work environment that is conducive to the maintenance of a drug-free work force. The Department will strive to achieve this goal through methods which are designed to provide a sense of awareness on the part of its employees so as to deter and eliminate any influence of drug abuse or alcohol use while on duty.

A. Drug Abuse Coordinator (DAC)

1. The Department will appoint a Drug Abuse Coordinator (DAC) who shall be responsible for the Department's Drug and Alcohol Abuse Program. Attendance at formal training programs or workshops designed for this purpose will be mandatory.
2. The DAC, in conjunction with the NMSP Training and Recruiting Bureau and the Human Resources Bureau, shall develop and administer a drug and alcohol abuse awareness program to inform employees about:
 - a. The dangers of drug and alcohol abuse;
 - b. Drug abuse recognition;
 - c. Drug Abuse Awareness and Screening Program;
 - d. Available counseling, rehabilitation, and employee assistance programs;
 - e. Related Department policies and New Mexico statutes;
 - f. Federal Drug Free Workplace Act;
 - g. Omnibus Transportation Employee Testing Act; and
 - h. The sanctions that may be imposed upon employees as outlined in this policy.
3. The DAC, in conjunction with the Human Resources Bureau, will develop information to be included in the orientation program as a means of informing new DPS employees of the Department's position on drug abuse.

4. The Drug Abuse Coordinator (DAC) shall maintain a list of positions designated as safety-sensitive.
 - a. Only those positions specifically designated by the Department shall be considered to be safety-sensitive positions for the purpose of this policy.
 - b. The list of safety-sensitive positions will be updated on an annual basis by the Drug Abuse Coordinator (DAC).

B. Employee Requirements and Obligations

1. All DPS employees are required and obligated to abide by the following rules:
 - a. No employee shall illegally possess any controlled substance.
 - b. No employee shall ingest any controlled substance, unless prescribed by a licensed medical practitioner.
 - c. Employees shall notify their immediate supervisor when required to use prescription medicine that they have been informed has the potential to impair job safety.
 1. The employee shall **NOT** advise the supervisor of the specific medication that is being used.
 2. The supervisor shall immediately contact their Commander/Bureau Chief with the employee's information. The Commander/Bureau Chief shall contact the DAC immediately who will discuss the specifics of the medication and its potential effects with the employee.
 3. The DAC will determine whether or not the employee can safely perform their regular duties while on the medication. The DAC will provide the HR Bureau Chief with the details and determination pertaining to the case. The DAC will document and maintain this information in a secured file. The DAC will work with the HR Bureau Chief to obtain medical information that may be required.
 - d. Employees shall not ingest any prescribed or over-the-counter medication in amounts beyond the recommended dosage or as prescribed by a health care provider.
 - e. Employees shall not consume alcoholic beverages while in uniform or on duty, unless the use of alcohol is part of a job-related activity.
 - f. Employees shall not report for duty while under the influence of alcohol or drugs.
 - g. Omnibus safety-sensitive employees who are required to possess a CDL are prohibited from consuming alcohol four hours prior to performing safety-sensitive functions. Safety-sensitive employees who are required to possess certification from the FAA shall not have a BAC greater than a .00 and are prohibited from consuming alcohol 12 hours prior to performing safety-sensitive functions.
 - h. Employees who unintentionally ingest, or are required to ingest, a controlled substance shall **immediately** report the incident to their supervisor. Failure to report such an incident is subject to discipline up to and including dismissal.

- i. Employees must disclose within five 5 days after any conviction for an alcohol or drug-related offense committed in the workplace, while on duty, or which will impact their ability to carry out their job duties. Failure to report such a conviction is subject to discipline up to and including dismissal.

C. Authorized Drug and Alcohol Testing

1. Candidate Drug Testing

This procedure is implemented to ensure the proper administration of drug testing as it applies to candidates for safety-sensitive or omnibus safety-sensitive positions.

- a. All candidates for employment in a safety-sensitive position are required to submit to drug testing after an offer of employment is made and prior to final selection for appointment.
- b. All candidates for intra-agency transfer, promotion and class reduction from a non-safety-sensitive position to a safety-sensitive position or omnibus safety-sensitive position shall be required to submit to drug testing prior to final selection for promotion, transfer, or class reduction.
- c. The DAC or designee shall arrange and handle all drug/alcohol testing for candidates within the New Mexico State Police, Special Investigations Division and Motor Transportation Police Department.
- d. The DAC or designee shall handle all other drug/alcohol testing for candidates for employment in other divisions and bureaus within DPS (dispatchers, LEA, program support, NMSP, auto maintenance, etc.).
- e. The candidate shall be informed of the purpose for the drug test. The candidate shall also be provided with an understanding of the procedural handling of the drug testing. The candidate shall be given an opportunity at this time to provide pertinent information relevant to the test.
- f. The candidate shall report to the collection site at the prescribed time and cooperate fully with the submission and collection of the drug test specimen.

2. Drug and Alcohol Testing Based on Reasonable Suspicion

- a. DPS shall require employees to undergo drug and/or alcohol testing if the Department has a reasonable suspicion that the employee has committed drug and/or alcohol abuse based on, but not limited to, one of the following warning signs:

Clarification added.

- 1. Direct observation of the physical symptoms or manifestations of being under the influence of a drug and/or alcohol such as liquor on breath, slurred speech, unsteady walk, or impaired coordination while on duty **or** at any time for employees assigned to safety sensitive positions within the Department of Public Safety.
- 2. Direct observation of the unauthorized use or possession of drugs or drug paraphernalia or the unauthorized use of alcohol while on duty **or** at any time, for employees assigned to safety sensitive positions within the Department of Public Safety.

Clarification
added.

3. Has caused a work-related accident/incident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident/incident or was involved in a shooting or other incident where the circumstances of the accident/incident indicate possible drug or alcohol use while on duty **or** at any time for employees assigned to safety sensitive positions within the Department of Public Safety.
- b. Before an employee is required to submit to a reasonable suspicion drug and/or alcohol test, a supervisor must secure the approval of the District Commander/Bureau Chief. If the supervisor is a Commander/Bureau Chief, approval must be secured by the next level supervisor unless the supervisor is the Secretary. The requesting supervisor must prepare an IDC within 24 hours after the specimen collection stating what gave rise to the reasonable suspicion including articulable facts and observations and submit the IDC to the DAC.
- c. The District Commander/Bureau Chief will arrange for the test to be conducted by a person or laboratory that meets applicable provisions and is certified to conduct such a test as stated in this policy. The employee will be notified of his/her duty status and drug or alcohol test order.
- d. The District Commander/Bureau Chief shall order the employee to immediately surrender state-owned equipment and shall ensure that the employee complies with the orders. The employee will be accompanied to the test site.
- e. The employee shall cooperate fully with the submission and collection of the specimen for the drug and/or alcohol test.

3. Random Selection of Employees for Alcohol and/or Drug Testing

At least ten percent (10%) of employees in safety-sensitive positions shall be required to undergo alcohol and/or drug testing on a yearly basis based upon a random selection process. The DAC or designee has the authority to seek approval from the State Personnel Office (SPO) Director to exceed the ten percent (10%) threshold for classified employees.

The percentage (%) rates of employees in omnibus safety-sensitive positions who shall be required to undergo alcohol and/or drug testing on a yearly basis based upon a random selection process shall be determined by the annually determined percentage (%) rates set forth by the federal agency governing that particular industry (i.e. Federal Aviation Administration (FAA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), etc.).

- a. At the discretion of the DAC and the Chief, employees may be excused from random drug testing if:
1. The employee has requested referral according to the provisions of this policy;
 2. The selection for random drug testing is made during the first 30 calendar days of the request for referral; and
 3. The employee is on an authorized leave of absence.
- b. If a classified employee is excused from random drug testing as allowed per this policy, the DAC or designee shall notify the SPO Director within 10 working days of such.

- c. The DAC will submit an updated list of the annual compilation of the classified service DPS safety-sensitive positions for a random selection of numbers to the State Personnel Office.
 - d. The DAC or designee shall obtain the test order from the Secretary and shall forward it to the District Commander/Bureau Chief. The test process shall be initiated immediately after written order is received by the employee's District Commander/Bureau Chief.
 - e. The District Commander/Bureau Chief or designee shall conduct a notification interview with the employee and shall ensure that the employee complies with the test order. The employee shall be informed of the purpose for the drug/alcohol test and shall be provided with an understanding of the procedural handling of the drug/alcohol testing. The employee shall be given an opportunity at this time to provide pertinent information relevant to the test.
 - f. The employee will read and sign the Drug Testing Acknowledgement Form for incumbents in the presence of the District Commander/Bureau Chief or other authorized person assigned to coordinate drug testing within their respective district/bureau.
 - g. If the employee is scheduled to work on a weekend, a swing or graveyard shift, he/she shall be placed on an on-duty status for the purpose of the testing and eligible for compensation under the provisions of Department policy or State Personnel Board Rules.
 - h. The drug testing must be completed within 48 hours of receipt or written order from the District Commander/Bureau Chief. If the test is for alcohol, it shall be completed immediately.
 - i. The employee shall report to the collection site where he/she shall cooperate fully with the submission and collection of the drug/alcohol test specimen.
 - j. The Commander/Bureau Chief shall return the Drug Testing Acknowledgement Form for Incumbents, signed by the employee, to the Human Resources Bureau within 48 hours of the employee receiving the written order.
4. Post-Accident Drug/Alcohol Testing

Employees performing omnibus safety-sensitive duties, who are involved in or may have contributed to an accident shall submit to a drug/alcohol test under the following circumstances;

- a. An omnibus safety-sensitive employee performing flight crew duties or aircraft maintenance who is involved in or may have contributed to an accident, shall submit to an alcohol test and a drug test.
- b. An omnibus safety-sensitive employee performing such duties as a CDL driver who is involved in an accident, shall as soon as practicable following an incident, submit to an alcohol test if;
 - 1. The accident involved the loss of life; and/or
 - 2. He/she receives a traffic citation within eight hours of the incident if the

incident involved bodily injury to any person requiring medical treatment away from the scene or one or more vehicles incurred disabling damage requiring a vehicle to be transported from the scene.

- c. An omnibus safety-sensitive employee performing such duties as a CDL driver, who is involved in an incident shall, as soon as practicable following an incident, submit to a drug test if;
 - 1. The incident involved the loss of life.
 - 2. He/she receives a traffic citation within 32 hours of the incident and the incident involved bodily injury to any person requiring medical treatment away from the scene or one or more vehicles incurred disabling damage requiring a vehicle to be transported from the scene.
- d. If an alcohol test is not administered within two hours as required under these circumstances, a record indicating the reasons the test was not promptly administered shall be maintained. If the test is not administered within eight hours following the incident as required under this section, attempts to administer the test shall cease and the same record shall be maintained.
- e. If a drug test is not administered within 32 hours following the incident, attempts to administer the test shall cease, and a record shall be maintained indicating the reasons that a drug test was not promptly administered.
- f. An omnibus safety-sensitive employee who is subject to post-accident testing shall remain readily available for such testing or may be considered to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people, or to prohibit a driver from leaving the scene to obtain necessary assistance.

D. Collection of Specimens

- 1. Unless otherwise specified, urine specimens for drug testing shall be collected by an independent laboratory or under the direction of an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the Substance Abuse and Mental Health Services Administration or the College of American Pathologists, Forensic Urine Drug Testing. The collection shall be in accordance with the September 1988 Edition of the Urinalysis Collection Handbook for Federal Drug Testing Programs of the National Institute on Drug Abuse. Any and all consent forms used in, or related to, the collection of urine specimens under this policy shall be approved by the Secretary of DPS. Forms and log books specified or recommended in the Urinalysis Collection Handbook for Federal Drug Testing Programs may not be used at all; may be used in a different form; may contain different information; or may involve different procedures than those used in this policy.
- 2. Testing for alcohol by breath shall be administered by any appropriately certified person or a medical or laboratory facility.
- 3. Blood specimens shall be collected by or under the direction of an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the College of American Pathologists in Forensic Drug Testing.

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4. Urine samples shall be collected utilizing a split-sample collection process. The initial urine sample shall be split into two containers. The first container shall be used for the initial screen and if positive, the second shall be used for the confirmation test. If positive, the candidate/employee shall have the option to have an aliquot of the specimen be tested by another independent laboratory as outlined in this policy.
5. The collection laboratories shall collect specimens utilizing procedures to ensure quality, accuracy and validity in the proper collection, storage, and transport of specimens.

E. Drug Testing

1. The initial and confirmatory drug tests shall be performed in accordance with DHHS/DOT testing guidelines and by an independent laboratory that meets applicable provisions of any state licensure requirements and is certified by the Substance Abuse and Mental Health Services Administration or the College of American Pathologists in Forensic Urine Drug Testing. The laboratory shall have the capability, on the same premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.
2. When screening specimens on the initial drug tests, the following initial cutoff levels shall be used to determine whether they are negative for these five drugs or classes of drugs: (ng/ml).

- | | |
|--------------------------|-------|
| a. Marijuana metabolites | 50 |
| b. Cocaine metabolites | 300 |
| c. Opiate metabolites | 300* |
| d. Phencyclidine | 25 |
| e. Amphetamines | 1,000 |

* 25 mg/ml if immunoassay specific for free morphine.

3. All specimens identified as positive on the initial drug test shall be confirmed by the laboratory at the cutoff values listed below for each drug. All confirmations shall be by quantitative analysis: (ng/ml).

- | | |
|--------------------------|--------|
| a. Marijuana metabolites | 15* |
| b. Cocaine metabolites | 150 ** |
| c. Opiates: | |
| 1. Morphine | 300 |
| 2. Codeine | 300 |
| 3. Phencyclidine | 25 |
| d. Amphetamines | 500 |

e. Methamphetamine 500

*Delta - 9-tetrahydrocannabinol - 9-carboxylic acid

** Benzoylecgonine

4. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens reported as positive on the confirmatory test shall be reported positive for a specific drug.
5. The laboratory shall retain and place those specimens confirmed positive in properly secured long-term frozen storage for at least 365 calendar days. An agency may request the laboratory to retain the specimen for an additional period of time. If the laboratory does not receive a request to retain the specimen during the initial 365-calendar day period, the specimen may be discarded.

F. Alcohol Testing

1. A test for alcohol shall be administered by breath for classified employees when being tested for random or reasonable suspicion purposes.
2. A test for any indication of alcohol in the 30 to 180 calendar day period, following an employee's request to be referred to alcohol rehabilitation in accordance with the provisions of this policy, may be performed by urinalysis.
3. A test for alcohol by breath shall be conducted by a person certified to operate an Intoxilyzer 8000 or approved collection instrument. That person shall be responsible for administering the test according to Scientific Laboratory Division (SLD) regulations. The approved instruments shall be maintained according to SLD regulations.
4. A test for alcohol by blood shall be collected by or under the direction of an independent laboratory that meets applicable provisions of state licensure requirements and is certified by the Substance Abuse and Mental Health Services Administration or the College of American Pathologists in Forensic Drug Testing.
5. Department of Public Safety non-commissioned employees with a blood-alcohol content (BAC) level of .04 or more shall be deemed positive for alcohol.
6. Department of Public Safety commissioned employees with a blood alcohol content (BAC) level of .02 or more shall be deemed positive for alcohol.

G. Reporting of Test Results

1. Drug and alcohol test results shall **ONLY** be reported to the Drug Abuse Coordinator (DAC) or designee.
2. The Drug Abuse Coordinator shall advise candidates and employees in writing of the test results. The Drug Abuse Coordinator may also advise candidates and employees verbally of the test results.
3. All records pertaining to a given urine specimen shall be retained by the laboratory for a minimum of two years.
4. Only those members of management who need to know shall be made aware of the test results. Breach of confidentiality shall be grounds for disciplinary action.

H. Explanation of Positive Test Results

1. Candidates for employment and employees who test positive for drugs or alcohol may, within two workdays of being advised of the test results, submit a written request to the agency's Drug Abuse Coordinator for a review of the test results by the Medical Review Officer. The test results of all candidates and employees who test positive for drugs and/or alcohol shall be referred by the agency's Drug Abuse Coordinator to the Medical Review Officer.
 - a. An employee or candidate may request a review of the test results within two workdays by the Medical Review Officer.
 - b. The Medical Review Officer shall examine any proffered or possible explanations concerning the validity of the confirmed positive test results. This action may include conducting a medical interview, review of the medical history, review of the chain of custody, and discussions with the collection or laboratory personnel. The Medical Review Officer shall review all medical records made available by the individual when a positive test could have resulted from legally prescribed medications and/or medical or dental treatment. The Medical Review Officer shall also review the results of any retest done accordingly to the provisions of this policy.
 - c. Should any questions arise as to the accuracy or validity of a confirmed positive test result, only the Medical Review Officer is authorized, on behalf of the state, to order a re-analysis of the original sample. Such re-tests are authorized to be performed only at an independent laboratory that meets applicable provisions of state licensure requirements and is certified by the Substance Abuse and Mental Health Services Administration or the college of American Pathologists in Forensic Urine Drug Testing.
 - d. Prior to making a final decision to verify a positive test result, the Medical Review Officer shall give the candidate or employee an opportunity to discuss the test results. The discussion between the Medical Review Officer and the candidate or employee may be in person or by telephone.
 - e. The Medical Review Officer shall advise the Drug Abuse Coordinator of his/her medical conclusions from the review of the test results. If there are conflicting factual statements, the Medical Review Officer shall not attempt to resolve that factual conflict, but shall report it along with his/her medical conclusions to the Drug Abuse Coordinator. Similarly, the Medical Review Officer shall not attempt to ascertain the factual correctness of any claim by the candidate or employee of involuntary ingestion of drugs or alcohol, but shall simply report such claims to the Drug Abuse Coordinator, all with his or her medical opinion as to the possibility that such occurrence could have affected the test results.
2. Based upon the Medical Review Officer's report and such other inquiries or facts as the Department may consider, the Department shall determine whether the candidate or employee's explanations or challenges of the confirmed positive test results are satisfactory.
 - a. If the candidate or employee's explanations or challenges of the positive test results are unsatisfactory to the Department, a written explanation as to why the explanation is unsatisfactory, along with the test results, shall be provided to the candidate or employee within ten calendar days of the Department's

determination. Such records shall be kept confidential by the Department and shall be retained for one year.

- b. If the candidate's or employee's explanations or challenges of the positive test results are satisfactory to the Department, a written explanation as to why the explanation is satisfactory, along with the test results, shall be provided to the candidate or employee within ten calendar days of the Department's determination. Such records shall be kept confidential by the Department and shall be retained for one year.

I. Re-testing

Employees and candidates who have sought review of their positive drug test results by the Medical Review Officer may elect to have, at their expense, an aliquot of the original urine specimen re-tested by another independent laboratory that meets applicable provisions of state licensure requirements and is certified by the Substance Abuse and Mental Health Services Administration or the College of American Pathologist in Forensic Urine Drug Testing. The drug testing laboratory shall arrange for the shipment of the aliquot to the laboratory of the candidate's or employee's choosing. The Department shall pay for the retest if the retest is negative.

J. Fairness Safeguards

Before requiring a candidate or employee to undergo drug or alcohol testing, the candidate or employee shall be provided the opportunity to indicate in writing of any over-the-counter or prescription medication that the candidate or employee is currently taking or has recently taken and any other information relevant to the reliability of the test results.

K. Confidentiality

No laboratory reports or test results shall appear in the employee's personnel file unless they are a part of a disciplinary action taken according to the provisions of Department of Public Safety policy. They shall be placed in a special locked file maintained by the Drug Abuse Coordinator or designee. Files relating to laboratory reports or test results maintained by the Drug Abuse Coordinator are confidential and may only be inspected with written permission of the employee or pursuant to a lawful subpoena.

L. Rehabilitation and Sanctions

1. Candidates for Employment

- a. Candidates for employment in a safety-sensitive position or omnibus safety-sensitive position who test positive for alcohol or drugs, and who do not seek review by a MRO, and/or are not able to satisfactorily explain the positive test results, shall be rejected for employment.
- b. Employees for intra-agency transfer, promotion and class reduction to a safety-sensitive position or omnibus safety-sensitive position, who test positive for alcohol or drugs without satisfactory explanation shall be rejected for transfer, promotion, or class reduction to the safety-sensitive position or omnibus safety-sensitive position and shall be subject to the provisions of sections L 3 or L 4 below.

2. Voluntary Self – Identification

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The DAC shall refer those employees who request a referral to an Employee Assistance Program (EAP), counseling, or a drug or alcohol rehabilitation program prior to selection for drug or alcohol testing.

- a. Any and all costs for counseling or rehabilitation shall be the responsibility of the employee.
 - b. DPS may grant administrative leave (up to 240 hours) to an employee to participate in an Employee Assistance Program, counseling, or a drug or alcohol rehabilitation program for the initial voluntary self-identification only.
 - c. Employees in safety-sensitive or omnibus safety-sensitive positions who have requested referral shall be placed in a non-safety sensitive position or capacity while in a drug or alcohol related employee assistance program, counseling, or a drug or alcohol rehabilitation program. Such an employee shall remain in the non-safety-sensitive position until successful completion of the approved substance abuse program or treatment plan and release by the substance abuse program provider.
 1. The referred employee shall be subject to drug and/or alcohol testing at the discretion of the DAC at any time between 30 and 180 calendar days of requesting a referral.
 2. Omnibus safety-sensitive employees may be tested up to twelve months from the date of referral with a minimum of six follow-up tests being given. Testing may be extended up to 60 months by a substance abuse professional.
 - d. Employees in safety-sensitive or non-safety-sensitive positions who have requested referral and test positive during this time period or fail to successfully complete such programs shall be subject to disciplinary action, up to and including dismissal.
 - e. Employees may be allowed to use sick, annual, or leave without pay for additional counseling or rehabilitation considering all factors relevant to the employee's condition or as required by law.
3. Safety-Sensitive Positions

Employees in safety-sensitive positions and omnibus safety-sensitive positions, who have not requested referral to a substance abuse professional or an Employee Assistance Program, counseling or a drug or alcohol rehabilitation program and test positive for alcohol or drugs on a required test without a satisfactory explanation, shall be subject to disciplinary action up to and including dismissal.

4. Non-Safety Sensitive Positions

Employees in non-safety-sensitive positions who have not requested referral to an Employee Assistance Program, counseling, or a drug or alcohol rehabilitation program and test positive on a required drug or alcohol test and do not have a satisfactory explanation shall be referred to an Employee Assistance Program, counseling, or drug or alcohol rehabilitation program.

- a. Such employees are subject to drug or alcohol testing at the discretion of the

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DAC or designee at any time between 30 calendar days and 180 calendar days of the first positive test.

- b. Any such employee who tests positive for alcohol or drugs between 30 and 180 calendar days of the first positive test or has a second positive test without a satisfactory explanation or fails to enter and successfully complete a program shall be subject to disciplinary action up to and including dismissal.
- c. Any such employee may be granted (up to 240 hours) of administrative leave to participate in an Employee Assistance Program, counseling or a drug or alcohol rehabilitation program on the initial reasonable suspicion referral only.

5. Employee Refusal to Cooperate in Testing Process

Any employee who refuses, or fails without good cause, to cooperate in the drug or alcohol testing process, or refuses or fails to complete the specified forms by refusing or failing to submit to a urine or breath test, or otherwise refuses to cooperate shall be subject to disciplinary action up to and including dismissal.

6. Employee Drug or Alcohol Use or Possession While On Duty

- a. Employees who illegally sell, purchase, or transfer (convey from one person or one place to another) drugs or any substance in Schedules I and II of the Controlled Substances Act (Section 30-31-1 through 30-31-41 NMSA 1978), while on duty, shall be subject to disciplinary action up to and including dismissal and shall be reported to the proper law enforcement agency.
- b. Employees who consume or have in their possession drugs, open containers of alcohol or any substance in Schedules I and II of the Controlled Substances Act (Section 30-31-1 through 30-31-41 NMSA 1978), while on duty, without a satisfactory explanation or without a valid prescription or as otherwise authorized by law, shall be subject to disciplinary action up to and including dismissal and will be reported to the proper law enforcement agency.

7. Imposition of Other Sanctions

Nothing in this policy shall prevent or limit the Department of Public Safety and the Secretary from imposing additional or other sanctions that may apply under the guidelines set forth in this policy when an incident involves drug or alcohol abuse.

7.0 ATTACHMENTS

NONE

8.0 APPROVAL

APPROVED BY: s/ Gorden E. Eden Jr. DATE: May 2, 2011
DPS Cabinet Secretary